

November 10, 2005

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Appeal

Name of Petitioner: Catherine Rose

Date of Filing: October 12, 2005

Case Number: TFA-0124

On October 12, 2005, Catherine Rose filed an appeal from a determination issued to her on September 8, 2005 by the Department of Energy's (DOE) Savannah River Operations Office (SR). In that determination, SR responded to a request for documents that Ms. Rose submitted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. SR determined that it did not have any documents responsive to Ms. Rose's request. This appeal, if granted, would require SR to perform an additional search and release any responsive documents or issue a new determination justifying the withholding of those documents.

I. Background

On January 13, 2005, Ms. Rose filed a request under the FOIA for "incident documents for 200-F and 200-H during the time period from 1950-1954." Letter from Lucy M. Knowles, SR, to Rose (September 8, 2005) (Determination Letter). In response to that request, SR informed Ms. Rose that it was unable to locate any responsive documents. Upon receiving the determination, Ms. Rose filed a subsequent request asking SR to perform an additional search and SR did so. After completing the second search, SR stated, "[t]he Savannah River Site (SRS) performed an additional search using the search terms 'INCIDENT' and '200' of both the UNCLASSIFIED and CLASSIFIED databases. SRS found no additional documents responsive to your request." Determination Letter. As a result, SR denied the request and Ms. Rose filed the present appeal.

In her appeal, Ms. Rose disputes SR's statement in the Determination Letter that operations began in the 200-F and 200-H areas of the SR complex in November 1954 and July 1955, respectively. Letter from Ms. Rose to OHA (October 3, 2005). Ms. Rose included in her

appeal information which she believed established that operations began in those areas prior to 1954 and 1955.

II. Analysis

In responding to a request for information filed under the FOIA, it is well established that an agency must “conduct a search reasonably calculated to uncover all relevant documents.” *Truitt v. United States Department of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). “The standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials.” *Miller v. United States Department of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); *accord Truitt*, 897 F.2d at 542. We have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Ms. Doris M. Harthun*, 28 DOE ¶ 80,282 (2003).

In reviewing this appeal, we contacted SR to ascertain the scope of the search. SR informed us that in performing the additional search that Ms. Rose requested, it was unable to locate any documents responsive to Ms. Rose’s request. According to SR, “[w]e searched for documents in both the classified and unclassified databases, using the search terms ‘incident’ and ‘200’ for the years 1950 to 1954. The use of these two search terms would have located responsive documents for any incident of any type in either 200-F or 200-H Areas for those years. We were unable to locate additional responsive documents.” Electronic Mail Message from Pauline Conner, SR, to Diane DeMoura, OHA (October 27, 2005). SR also explained, citing to a book outlining the history of the SR complex, that although other areas within the complex began operations prior to 1954 and 1955, the 200-F and 200-H areas did not commence operations until November 1954 and July 1955, respectively. *Id.*

SR performed a search for documents, using appropriate search terms, regarding the facilities Ms. Rose requested within the time frame she provided. Based on this information, we find that SR conducted a search reasonably calculated to reveal records responsive to Ms. Rose’s initial request and, therefore, was adequate. Accordingly, Ms. Rose’s appeal should be denied.

It Is Therefore Ordered That:

(1) The Appeal filed on October 12, 2005 by Catherine Rose, OHA Case No. TFA-0124, is hereby denied.

(2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district

in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

George B. Breznay
Director
Office of Hearings and Appeals

Date: November 10, 2005